



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1995

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-766

Dear Ms. Calabrese:

You have asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 34039.

The City of Houston (the "city") received a request from an attorney, on behalf of his client, for a photograph of an area where an accident occurred. However, the city asserts that the photograph is excepted from disclosure under section 552.103(a) of the Government Code. To show the applicability of the section 552.103(a) exception, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.¹

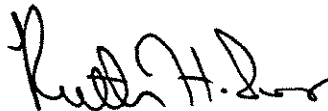
The city contends that litigation is reasonably anticipated because the individual involved in the accident has retained an attorney, who is now requesting the photograph. The attorney notified the city that he is representing the injured individual in connection with the accident. It appears that he is investigating the accident and the possibility of pursuing damages against the city.

¹The Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. See Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. (to be codified at Gov't Code Ch. 552) (copy available from Texas House of Representatives Document Distribution). We do not address in this ruling whether these recent amendments to the Open Records Act will affect requests for this information that are made on or after September 1, 1995.

This office has determined that litigation was reasonably anticipated when an attorney demanded that the governmental entity pay damages to his client or otherwise he would bring a lawsuit. Open Records Decision No. 551 (1990). However, this situation appears similar to that in Open Records Decision No. 361 (1983), where we determined that litigation was not reasonably anticipated. In that situation, an applicant who had been rejected for a job hired an attorney, and the attorney began investigating the reasons for the rejection. The fact that the attorney was investigating the situation did not trigger reasonably anticipated litigation. We pointed out that there were no statements of intent at that point to bring suit against the governmental entity. *Id.* at 2.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. For litigation to be reasonably anticipated there must be "concrete evidence" showing that litigation may ensue. *Id.* The city has not established that litigation is reasonably anticipated in this situation. Since the city has not shown the applicability of section 552.103(a), the report must be released to the requestor. We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 34039

Enclosure: Submitted document

cc: Mr. James Earl Elskes
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(w/o enclosure)